

### **Remarks**

The various parts of the Office Action are discussed below under similar headings.

#### ***Election/Restriction***

The Examiner issued a restriction requirement under 35 U.S.C. § 121, requiring the applicant to elect one of: claims 1-24 (Set I) or claims 25-37 (Set II).

Applicant elects to prosecute claims 1-24. Accordingly, claims 25-37 are being cancelled.

#### ***Claim Amendments***

Claims 1, 4-6, 8-15, 19 and 20-24 have been amended to clarify the claimed invention. Claims 3 and 7 have been cancelled. Claims 25-37 have also been cancelled in response to the Examiner's restriction requirement. New claims 38-53 have been added.

#### ***Specification & Drawings***

The Examiner objected to the abstract of the disclosure because it contained the phrase "the present invention relates." The abstract has been amended to remove the objectionable language.

The Examiner also objected to the specification and drawings. Specifically, the Examiner noted that:

- Reference number 200 did not appear in the patent description;
- Figure 11 was not labeled;

- The language “shaft 804” on page 14, line 24 was inconsistent with the Figures; and
- Reference number 104 was incorrect on Figure 10.

The specification has been amended to address these objections. The reference number “200” was added to the specification on page 10. On page 14, the reference number “1100” was added to refer to the aiming device of Figure 11 and the phrase “shaft 804” was amended to read “shaft 1004.”

In addition, the reference number “104” was changed to read “1004” in Figure 10 and the Figure 11 was amended to include the reference number “1100.”

The Examiner also objected to the drawings because the “at least one ridge oriented in a different direction than the other regions” of claim 13 was not depicted in the figures. Claim 13 has been amended to read “multiple ridges oriented in different directions.” It is submitted that Figure 5C provides support for amended claim 13.

### ***Claim Rejections - 35 USC § 101***

The Examiner rejected claims 5 and 9 under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Specifically, the Examiner determined that the phrase “wherein the tab is attached to the lateral mass of the selected vertebra” includes part of the human body within its scope. The Examiner suggested that the language be amended to read “wherein the tab is configured to be attached to the lateral mass of the selected vertebra.” Claims 5 and 9 have been amended to read “wherein the tab is configured for attachment....”

Applicant respectfully submits that claims 5 and 9 are now in condition for allowance.

Docket No. HORA.P0102US  
Serial No. 10/762,008

***Claim Rejections - 35 USC §§ 102 and 103***

The § 102 and § 103 rejections were discussed during a May 15, 2006 interview. Examiner Robert suggested that a third party affidavit or declaration regarding the differences between the cited art and the claimed invention may be helpful. A declaration and curriculum vitae of John E. Sherman, M.D. is attached for the Examiner's reference.


***Conclusion***

This application is now in condition for allowance and an early action to that effect is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF MAILING (37 CFR§ 1.8a)

I hereby certify that this paper (along with any paper or thing referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 223131450.

Date:

June 7, 2006

  
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